CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 56

AMERICAN FEDERATION OF LABOR, JOHN FITZPATRICK, CHICAGO FEDERATION OF LABOR, ET AL., PETITIONERS,

vs.

ROSS W. SWING, IRENE BOTVIN, NAN CHAPMAN, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED APRIL 19, 1940.

CERTIORARI GRANTED MAY 20, 1940.

Blank Page

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No.

AMERICAN FEDERATION OF LABOR, JOHN FITZPATRICK, CHICAGO FEDERATION OF LABOR, ET AL., PETITIONERS,

vs.

ROSS W. SWING, IRENE BOIVIN, NAN CHAPMAN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

INDEX.

	Original	Print
Proceedings in Supreme Court of Illinois	1	1
Caption (omitted in printing)	1	
Abstract of record from Circuit Court of Cook County	4	1
Complaint	4	1
Injunctional order	22	13
Order denying plaintiffs' motion to strike defendant's answers	24	15
Order dissolving injunction and giving leave to file amended complaint	24	15
Order dismissing cause	26	15
Answer of Journeymen Barbers International Union	28	16
Answer of Hairdressers and Cosmetologists Union	31	18
Certificate of clerk	58	23
Abstract of record from Appellate Court of Illinois	64	23
Judgment	64	23
Order certifying cause to Supreme Court	64	24
Clerk's certificate	65	24

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 19, 1939.

—5213

	Original	Print
Minute entry of argument and submission (omitted in printing)	66	
Opinion, Shaw, J.	68	24
Concurring opinion, Stone, J.	70	28
Concurring opinion, Jones, J.	70	29
Dissenting opinion, Farthing, J.	71	29
Judgment	73	33
Order denying rehearing	75	34
Motion for stay of mandate (omitted in printing)	77	
Order denying motion for stay of mandate (omitted in printnig)	79	
Motion for stay of execution (omitted in printing)	81	
Order denying motion for stay of execution (omitted in printing)	82	
Clerk's certificate (omitted in printing)	83	
Order of Supreme Court of the United States staying mandate	84	34
Stipulation as to printing record	85	34
Abstract of record from Appellate Court of Illinois	37	36
Decree	37	36
Assignment of errors	40	39
Notice of motion respecting record and abstract	43	40
Motion respecting record and abstract	44	41
Notice of motion to dismiss writ of error	46	42
Motion to dismiss writ of error	47	43
Suggestions in support of motion to dismiss writ of error	48	43
Order dismissing writ of error	50	45
Judgment	51	46
Clerk's certificate	52	47
Order allowing certiorari	53	47

[fols. 1-4]

IN APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, JUNE TERM, A. D. 1938

Ross W. Swing, Irene Boivin, Nan Chapman, et al.
Plaintiffs,

vs.

American Federation of Labor, John Fitzpatrick, Chicago Federation of Labor, et al., Defendants

Appeal from Circuit Court, Cook County

Honorable Joseph Burke, Judge Presiding.

Abstract of Record--Filed in Supreme Court January 18, 1939

COMPLAINT

Complaint of Ross W. Swing, Irene Boivin, Nan Chapman, Pauline A. Charles, Elmer J. Frueh, Catherine O'Connor, Theresa Insolia, Ellen Jensen, Leah Jenum, Margaret Kessell, Lillian L. Morris, Olga Sembrat, Frances J. Steele, Audrey Storrs, Lydia Strasheim, Martha Reikert, and Margaret Fuentes, against the following: American Federation of Labor; John Fitzpatrick, individually and in his official capacity; Chicago Federal of Labor; John Fitzpatrick, [fol. 5] President, and Anton Johanson, Vice-President, in their respective official capacities and individually; also all members, officers, etc., of the American Federation of Labor and Chicago Federal of Labor, whose names are unknown to plaintiffs; Journeymen Barbers' International Union of America; Frank Rango, Sixth Vice-President, individually and in his official capacity; and all other members of said Union, whose names are unknown to the plaintiffs; Journeymen Barbers' International Union of America, Local 548; its members whose names are unknown to the plaintiffs, and Frank Rango, Secretary and Treasurer, individually and in his official capacity; Hairdressers and Cosmetologists Union, Local 548-D; and its members; Patsy Trotta, Secretary and Treasurer; and Sadie S. Murphy, President; individually and in their official capacity; said complaint alleges as follows:

All of the plaintiffs (other than Ross W. Swing) are employed by Ross W. Swing, and are all of his employees in a beauty shop owned and operated by said Swing in the City of Chicago, County of Cook and State of Illinois, under the trade name and style of Manor Beauty Salon. Defendant, Hairdressers and Cosmetologists Union, Local No. 548-D, is a voluntary union or association, composed of many persons whose names are unknown to plaintiffs and who are too numerous to be sued; defendants, Patsy Trotta, Sadie Murphy, Felix Rose and N. C. Iannella are affiliated with said union as members, agents, directors or officers; Journeymen Barbers' International Union of America, Local No. 548, is a voluntary association, composed of many persons unknown to the plaintiffs and too numerous to sue; [fol. 6] Frank Rango is affiliated with the union as a member and Secretary and Treasurer of said Local; Journeymen Barbers' International Union of America is also a voluntary association composed of many members, too nuerous to be sued, and the names of said members being unknown to plaintiffs; defendant, Frank Rango, is a member and sixth Vice-President of the Union; Chicago Federation of Labor is also a voluntary association composed of many members, unknown to the plaintiff's and too numerous to be sued; John Fitzpatrick and Anton Johanson are affiliated with said Union as members and as President and Vice-President thereof; American Federation of Labor is also a voluntary association composed of many members unknown to the plaintiffs; John Fitzpatrick is affiliated therewith as a member, agent, director or officer; Hairdressers and Cosmetologists Local No. 548-D, holds a charter and operates under a secret agreement with Journeymen Barbers' International Union of America, Local 548 of said Union; Journeymen Barbers' International Union of America, Local 548, holds a charter and operates under secret agreement with the Journeymen Barbers' International Union of America of the America Federation of Labor; the Journeymen Barbers' International Union of America holds a charter and operates under secret agreement with American Federation of Labor; the Chicago Federation of Labor holds a charter and operates under a secret agreement with the American Federation of Labor; the American Federation of Labor has its principal office in the City of Washington, in the District of Columbia, and a branch office in [fol. 7] Chicago, Illinois; the Chicago Federation of Labor

has its principal office in the City of Chicago; Journeymen Barbers' International Union of America has its principal office in the City of Indianapolis, State of Indiana, and maintains an office in the City of Chicago, in charge of a sixth Vice-President; Local 548 of Journeymen Barbers' International Union of America has its offices in the City of Chicago; Local 548-D of the Hairdressers and Cosmetologists Union maintains its offices in the City of Chicago. By virtue of the charters and secret agreements, the Hairdressers and Cosmetologists Union, Local 548-D, and its officers, directors, members, etc. are under direct supervision of Local 548 of the Journeymen Barbers' International Union of America of the Journeymen Barbers' International Union, and its members, etc., are under direct supervision and control of the Journeymen Barbers' International Union; the Journeymen Barbers' International Union of America and the Chicago Federation of Labor are under the direct supervision and control of the American Federation of Labor.

Plaintiff, Ross W. Swing, is employer of all other plaintiffs and owner and operator of the beauty parlor operated under the trade name of Manor Beauty Salon, is the sole owner of the Manor Beauty Salon, is conducting a beauty shop wherein beauty services are rendered and cosmetics and similar articles sold to the public at 5558 West North Avenue, Chicago, Illinois; that he has expended many thousands of dollars in equipping and furnishing the place of business; also large sums of moneys for advertising, promotion and other publicity; by reason thereof he has built [fol. 8] up a valuable clientele and established a good will for his business; his place of business occupies an entire former bank building, having a frontage of 50 feet on West North Avenue and 100 feet on Central Avenue; the entrance to his place of business being on North Avenue. He employs 16 employees, all of whom have joined with him as plaintiffs in this proceeding. On April 30, 1937, defendants, Patsy Trotta, Felix Rose, N. C. Iannella and Sadie Murphy and others acting in accordance with the terms of the secret agreement with the Journeymen Barbers' International Union, Local 548 of said Union, undertook and entered upon the task of forming a beauticians' department of said Union, using the name of Hairdressers and Cosmetologists Union, Local 548-D of said Journeymen Barbers' International Union; that said Union of beauticians

was created for the purpose of organizing employees of various beauty shops in the City of Chicago and elsewhere, and to compel the employees of said beauty shops to join said Union. Patsy Trotta, Felix Rose and N. C. Iannella as Secretary and Treasurer and business agents of said Hairdressers and Cosmetologists Union, Local 548-D, during the month of April, 1937, called upon the plaintiff, Swing, and demanded that he instruct his employees to join their Union. Plaintiff, Swing, advised and informed said Secretary and Treasurer and business agents aforementioned that he had no objection to his employees joining the Union if they wished to do so; that he had no objection to said organizers discussing the matter with his employees; said Patsy Trotta, Felix Rose and N. C. Iannella and other representatives of said Union at various times and on various days and dates appeared at the shop operated by plaintiff, Swing, [fol. 9] and spoke with his employees and requested and urged them to join the Union. Plaintiff, Swing, is advised and informed that all of his employees refused to join said Union, and so informed the defendants. Plaintiff nor any of his agents, servants, etc., have done or said anything to prevent his co-plaintiffs (his employees) or any of them to join or to become affiliated with any labor union, organization or society; that so far as he knows, none of his employees are dissatisfied with the wages they are receiving for their services, the hours or any other condition of employment; he has been advised and informed and states the fact to be that his employees refuse to join the Union by reason of the following: (a) Several of his employees had on different occasions joined other similar Unions, paid their dues and fees; that these organizations lasted but a a short time thereafter and were never heard of; his employees fear that their experience with this new Union would be identical with that of their past experience; (b) his employees believe that a minimum wage law will assure them of a reasonable wage and will protect them against unreasonable working hours or conditions; that by reason thereof they see no necessity nor any advantage coming to them in joining a Union and paying dues and fees; (c) that the employees believe and stated to him that the efforts on the part of the defendants, Rose, Trotta and Iannella, to compel them to join the Union is the result of concerted action on their part and on the part of others to collect a large sum of money from them and thousands of other employees in

the beauty shop industry, which large sums of money they believe are not to be used for the advancement of the mem-
[fol. 10] bers of the Union and the betterment of their wage and working conditions, but that said money will be wasted and otherwise dissipated in payment of extravagant organizers' fees, costs of administration and in other ways not for the benefit of the members of the Union. All of plaintiff, Swing, employees are competent and efficient, and he sees no reason for discharging them because they failed to join defendant Union; he has no quarrels, disputes, differences or misunderstandings with his employees; that there never has been nor is there now any lock-out on his part or any strike existing and engaged in by his employees; that at no time during the month of April or at any time before or at the present time, is there any dispute whatsoever between him and his employees concerning terms or conditions of employment. Notwithstanding that there was no dispute between plaintiff and his employees concerning terms or conditions of employment, wages or hours, but solely because of the fact that defendants failed to accomplish their purpose and induce the employees to join their Union, the defendants, their officers, directors, members, etc., did on April 30, 1937, maliciously conspire, and as a result of the conspiracy, caused Plaintiff's place of business to be picketed by persons other than his own employees and by employees of the defendants, whose names are unknown to plaintiff. That beginning on April 30, 1937, and up to the date of the filing of this complaint and excepting a period of three weeks from June 7, 1937, to June 28, 1937, during which time the defendants were restrained by an order of the United States District Court, one and very often two, male and female pickets were and are carrying large signs with the words in large letters: "This
[fol. 11] Beauty Shop Is Unfair to Organized Labor, Hairdressers and Cosmetologists Union Local 548-D, American Federation of Labor and Chicago Federation of Labor." And said pickets carried said signs, walked up and down the sidewalk on West North Avenue, in front of plaintiff's beauty shop, during the entire day and part of the evening, when his place of business was open for business; that the statement contained on the sign carried by the pickets, to-wit: "This Beauty Shop Is Unfair to Organized Labor", is untrue and designedly false and malicious; said pickets with said signs parade in front of his place of business at

about three feet from the building line of the shop, and walk in an easterly and westerly direction, always walking against the traffic and interfering with customers of plaintiff entering and coming from his place of business.

On May 15, 1937, at 5:00 o'clock P. M. one of his customers, Florine Johnson, who had just had some beauty work done in his shop, upon leaving said shop and reaching the sidewalk in front of the shop, was accosted by a woman who was then and there picketing in front of plaintiff's shop, and whose name is unknown to plaintiff; said picket rushed forward and grabbed Miss Johnson by the arm and said to her in a threatening manner: "You better not go in there again; it's a scab shop." Whereupon, said Miss Johnson fled in fear of physical violence and bodily harm. On May 15, 1937, one of his customers, to-wit: Mrs. E. H. Keyser, after having some work done in the beauty shop, and who was leaving his premises, was accosted by two men passing in an automobile; these two men had [fol. 12] been frequenting the immediate vicinity of the curb in front of plaintiff's shop; they made the following statement to said customer in a menacing voice: "You ought to be shot for going into that scab shop." In the operation of his business, plaintiff deals with ladies, many of whom are wives, daughters and friends of members and persons affiliated with labor organizations; many of his customers are themselves members of labor organizations, or are in sympathy with organized labor; the unwarranted and unlawful acts of the defendants are misleading these people into believing that there is a strike going on in his shop and that plaintiff is unfair to his employees; the misrepresentation and false statements have resulted and will result in immeasurable loss of business and irreparable damage to plaintiff, Swing, so long as defendants continue the acts herein complained of; the nature of plaintiff's business is such that it is necessary that his employees be at all times at ease, composed and collected; the picketing of the agents of defendants is causing the employees to be nervous, ill at ease, confused in their work and the customers are in danger of being injured; the state of mind of the employees affects the quality of their work, with the result that customers have become dissatisfied, and plaintiff is losing and will lose a large number of his customers, all to his irreparable injury. The nature of his business is such that customers who once cease to patronize his beauty

shop and have services rendered to them by another beauty shop, it is difficult to regain their patronage. The defendants, under a pretext that there is a labor dispute between plaintiff and his employees, are maliciously picketing and causing his shop to be picketed; in truth and in fact there is [fol. 13] no dispute between the plaintiff, Swing, and his employees (his co-plaintiffs); defendants are picketing his place of business not for the purpose of obtaining better terms and conditions for his employees, but in furtherance of a conspiracy, malicious and ulterior motive of their own, and for the sole and only purpose and by force and intimidation to compel plaintiff and his employees to become members of their Union. Plaintiff is in no position to enforce or coerce his employees to join defendants' Union; there is no reason why plaintiff should be injured by defendants; plaintiff, Swing, has never ordered, directed, advised or suggested to his employees that they do not or should not join defendants' Union; plaintiff has no dispute with defendants or their agents; the statement appearing on the signs carried by the pickets that he is unfair to organized labor is not justified by the facts; in truth and in fact plaintiff pays his employees the prevailing wage in the City of Chicago; his employees work under superior conditions in a building considered to be one of the best equipped in the City of Chicago for the beauty shop business; the statements appearing on the sign, together with the patroling and picketing is a picketing which is intended to unlawfully interfere with plaintiff's business; plaintiff is informed and believes that there are a large number of beauty shops in the City of Chicago, many of which employ more operators than he employs, whose employees are not members of any Union; that wages and working conditions in the other shops are lower and not as good as those in his shop; that there never has been nor is there now any picketing done by these defendants or their agents in front of said other shops; plaintiff is informed and believes that because of personal ani- [fol. 14] mosity, the defendants are attempting to destroy his business, under the guise of a labor dispute, but for the benefit of his competitors. Plaintiff, Swing, has invested upwards of $15,000 in equipping his shop and in advertising; he is under great and heavy overhead expense of a fixed and permanent character; said expense can only be paid out of his business operations; a reduction in income caused by the acts of the defendants will result in his being unable

to meet his fixed expenses and he will therefore lose his business and his investment. The unlawful acts and conduct of the defendants creates a false impression and belief in the minds of the members of the public and his customers and patrons that his employees are striking because they are not fairly treated or sufficiently paid; thereby creating an antipathy and antagonism towards him on the part of the public and his customers; this is destroying his good will, causing him to lose business prestige and large sums of money, all to his injury.

Irene Boivin, Nan Chapman, *et al.* (being all of the employees and plaintiffs herein) complain as follows: They constitute all of the employees of Ross W. Swing in the beauty shop operated by him and known as the Manor Beauty Salon, at his place of business on North Avenue, in the City of Chicago; they have been employed by him for periods varying from two to eighteen months. They were engaged in their respective duties and employment on April 30, 1937; on said date, not at any time before nor since, was there any dispute between them as employees and Swing as their employer, concerning terms or conditions of employment or wages; they were satisfied with their salaries and with the hours and conditions under which [fol. 15] they worked, and are now satisfied. On April 15, 1937, Patsy Trotta, Felix Rose and N. C. Iannella, representing themselves as duly authorized organizers for the defendant Unions, appeared at the Manor Beauty Salon and talked to Ross W. Swing, their employer; they stated to him that they came for the purpose of speaking to the employees for the purpose of inducing them to join their Union; said Swing permitted them to talk and discuss the matter of joining the Union with his employees; at various times, days and dates, each and every of the employees spoke with said representatives of the Union and repeatedly told them that they had no desire to join the Union. That neither they nor their employer, Swing, had done or said anything to prevent them, or any of them, or induce them or any of them, not to join or become affiliated with any labor Union. These employee-plaintiffs never at any time had any desire to become members of or become associated with any labor union; their failure and refusal to join the Union is of their own free will and accord; they have and do now refuse to join said particular Union because of the following reasons: (a) several employees have

on different occasions joined other and similar unions which were attempted to be organized in their industry; they paid their initiation fees and dues and the organizations lasted but a short time; they were never heard of or from; that these employees fear that their experience with the defendants' Union would be identical with that of their other past experiences; (b) that these employees believe that the minimum wage law will assure them of a reasonable wage and would protect them against excessive working hours; that the minimum wage and hour regulations would give [fol. 16] them all that they could possibly expect from any Union; therefore, there is no necessity and no possible advantage to be obtained by joining a Union and paying a monthly tax which they cannot afford and from which they will receive no benefit; (c) that they verily believe and have so stated to their employer (Swing) that the efforts on the part of the organizers of the Hairdressers and Cosmetologists' Union, Local 548-D and the organizers aforementioned, is the result of a concerted action on the part of the officials of the Union to collect large amounts of money from them and the thousands of other employees in the beauty shop industry, which sums of money they believe are not to be used for the advancement for the members of the Union and the betterment of their wages and working conditions, but that said money would be wasted, consumed and dissipated in payment of extravagant organizers' fees and cost of administration, and in other ways not for the benefit of the members of the Union. These employees have not at any time asked, nor do they now ask, anyone to represent them or assist them in the matter of improving their salaries, the hours of conditions of employment with their employer; notwithstanding the fact that they have repeatedly informed the Union organizers aforementioned that they were satisfied with their employment, their wages, hours and working conditions; that they had no dispute with their employer over any question dealing with their employment; that they did not wish to join the particular labor union; that they had no desire to have the defendants or their organization act for them and make any demands on their behalf to their employer; yet these defendants and their agents, etc. on April 30, 1937, caused their [fol. 17] employer's place of business to be picketed. That since the 30th of April, 1937, and up to the filing of this

complaint, with the exception of a period of three weeks, one and very often, two pickets, both male and female, walked up and down on West North Avenue and in front of their employer's place of business during the entire day and part of the night and picketed the place of business, carrying large signs in words and large letters appearing thereon as follows: "This Beauty Shop Is Unfair to Organized Labor—Hairdressers and Cosmetologists Union Local 548-D, American Federation of Labor and Chicago Federation of Labor." The statements which appear on these signs carried by the pickets are untrue and designedly false and malicious. Said pickets carrying said signs parade in front of the place of business at distance of about three feet from the building line, walking against the traffic and interfering with the customers of the beauty shop, entering and leaving said place of business. In said business, they serve ladies, many of whom are wives and daughters and friends of men affiliated with labor unions; many of their patrons are themselves members of labor organizations; many others sympathize with organized labor. The unwarranted and unlawful acts of the defendants are misleading their customers and the public, in that they are led to believe that there is a strike of employees going on and that their employer is unfair to his employees; in truth and in fact their employer is not unfair and has no quarrel with organized labor or any other labor, and has never been unfair to organized labor; there is no strike insofar as they (Swing's employees) are concerned. Such representations and false statements have and will result [fol. 18] in a loss of patronage, all to their and their employer's damage and loss; that the employees state that by reason of these unlawful acts they have lost and will continue to lose salaries and other emoluments which they have heretofore received. During their employment the employees have built up a clientele of their own; this clientele is of great value to them and to their employer; the nature of their work requires that they should at all times be at ease and composed. Any disturbance of their peace of mind reflects in their work and makes it impossible for them to render satisfactory service; this causes dissatisfied customers and they have lost customers and patronage and a continuance of the picket line will continue to cause them to lose their clientele and their employment; this is their

only source of income. The picket line continues up and down in front of the doors and windows of the shop and they, by reason thereof, have become upset and mentally disturbed. When they arrive at their place of employment in the morning, these pickets gaze at them in a threatening manner; when they go to lunch and return, they are again met with these threatening stares; when they leave their place of employment at the end of the day, they are again faced each day with the same pickets who bear the same threatening attitude. During the day men are constantly parked in automobiles at or near the windows of the beauty shop; towards evening and when the shop is about to close a number of men congregate near the entrance to the shop; the result is that they are constantly in fear of violence and are in fear of leaving their place of business and homes at night. The defendants have conspired between themselves to injure them and their employer, and are using as a means to further the conspiracy the untruth-[fol. 19] ful pretext that there is a labor dispute between the plaintiff and his employees; that as a result of said conspiracy they have and will continue to cause, if permitted to continue, irreparable damage to them and their employer. That it is the intention of the defendants to continue the picketing, threats, intimidating, following, threatening until they and their employer yield to this force against their will, and until they all agree to join the Union and pay dues, or until their employer is compelled to close his business and they will lose their jobs. All of the plaintiffs state: That in the rendition of services to their patrons there is a constant need of large quantities of hot water; up to April 30, 1937, there was at all times available an ample supply of hot water; since April 30, 1937, the supply of hot water has become greatly diminished and at times has completely stopped. Upon making complaint to the engineer or janitor in charge of the building, they were advised that the inability to supply hot water was due to the failure of the hot water apparatus to function properly. Owner plaintiff's conclusion is, that the hot water apparatus was in good condition and the inability to supply was due entirely to deliberate acts of the engineer in failing to properly adjust hot water apparatus and to provide adequate supply of fuel under boiler. Plaintiffs charge that the engineer is part and parcel of the conspiracy and is a party

thereto, and that this conduct of the engineer is made in concert with the defendants and in and about their unlawful acts. In and about the operation of the business there is a constant need of towels; prior to April 30, 1937, plaintiff (Swing) had entered into a contract with the Elston Laundry to furnish these towels; prior to April 30, 1937, business has been furnished with ample and sufficient towels [fol. 20] to meet the requirements. Since said picketing and up to the present time the supply of towels has been inadequate, without any reasonable excuse. Upon inquiry being made to the driver of said Laundry Company truck, delivering towels, untruthful statements have been made, evasions have been resorted to, but the supply has not been delivered. Plaintiffs charge that the agents and servants of the Elston Laundry Company have entered into some arrangement or conspiracy with the principal defendants for the purpose of coercing all of the plaintiffs into joining the labor union. Plaintiff (Swing) charges that his right to conduct his business without interference from outsiders is a property right; his right to employ labor without interference is also a property right. Conspiracy charged herein and the acts and conduct of the defendants complained of, deprive plaintiff of his property without due process of law, contrary to paragraph 2 of Article 2 of the Constitution of the State of Illinois and the Fifth Amendment to the Constitution of the United States; also the Fourteenth Amendment to the Constitution of the United States. The righ to freely contract on the part of employees and without interference is guaranteed by the Constitution of the State of Illinois and the above Amendments to the Constitution of the United States. The defendants and those assisting and aiding them are financially irresponsible and damages cannot be collected; actions for damages cannot be brought to trial for a long time, during which time plaintiff will be subjected to the interference herein set forth and his business will be destroyed. The acts complained of will continue unless enjoined; plaintiffs have no adequate remedy at law, and unless enjoined by this court plaintiff will suffer irreparable damage. Bill prays that the defendants [fol. 21] (naming them) may be required to answer, answer under oath being waived. That temporary and permanent injunction issue; restraining the defendants, their agents, etc.

(1) from picketing or maintaining any picket or pickets at or near plaintiff's (Swing) place of business, or along routes used by persons in going to and from same;

(2) from patrolling or congregating in front of or in vicinity of plaintiff's place of business, in vehicles or on foot, in furtherance of such picketing;

(3) from assaulting, menacing, intimidating, threatening or harrassing, by act or attitude, any person or persons going to and from plaintiff's business;

(4) from calling or addres-ing any epithets or offensive language to plaintiffs or other persons;

(5) from following plaintiffs for the purpose or with the effect of molesting or intimidating plaintiffs;

(6) from calling at homes of plaintiffs for the purpose or with the effect of molesting or intimidating them or their families;

(7) from exhibiting or displaying any sign or placard in front of or in the vicinity of plaintiff's business, designating or characterizing plaintiffs as unfair to organized labor or by any other means designed to induce or influence persons not to deal with plaintiffs;

(8) from injuring or attempting to injure plaintiff's business;

[fol. 22] (9) from advising, encouraging or assisting in any of the things herein forbidden;

and for such other and further relief as equity may require, etc.

Prayer for summons.

Bill is signed by all plaintiffs and contains affidavit of Ross W. Swing and Margaret Kessel as plaintiffs and duly authorized agents of other plaintiffs, stating that bill of complaint is true.

* * * * * * *

INJUNCTIONAL ORDER

Injunctional order entered by Judge Feinberg July 17, 1937, as follows: That cause came on to be heard on motion of plaintiffs' attorney for temporary injunction, on

July 9, 1937, that all of the defendants were given due notice; that the court read the sworn bill of complaint and heard arguments of counsel representing plaintiffs and defendants; it is ordered that on plaintiffs' filing a bond in the sum of $1,000 to be approved by the court, that a writ of injunction issue, restraining and enjoining the defendants (naming them) from:

(a) Picketing or maintaining any picket or pickets at or near the place of business of plaintiff (Swing) at 5558 West North Ave.

[fol. 23] (b) Patrolling or congregating in front or in the vicinity of plaintiff's business, in furtherance of picketing;

(c) Exhibiting or causing to be exhibited any sign or placard or other matter in front of or in the vicinity of plaintiff's business, designating the plaintiff's business as being nonunion or unfair to organized labor, or as refusing to permit collective bargaining, or designed to induce or influence persons not to enter plaintiff's place of business;

(d) Soliciting, inducing or influencing or attempting to induce or influence persons, employees or prospective employees of plaintiff not to enter his place of business or do business with him;

(e) Menacing, intimidating, threatening or harrassing persons employed by or persons going to and from plaintiff's place of business; from calling plaintiff and members of plaintiff's family and plaintiff's employees vile names and shouting offensive epithets;

(f) Threatening, coercing, intimidating or assaulting the employees of the plaintiff or harrassing the employees of the plaintiff, while on their way to and from their homes to the place of business;

(g) Threatening, coercing, intimidating or assaulting prospective employees, or persons seeking employment from the plaintiff, and from preventing by threats, coercion or intimidation, such prospective employees and persons seeking employment, from entering plaintiff's place of business;

[fol. 24] (h) Advising, encouraging or assisting or participating in the doing of any of the things herein forbidden.

* * * * * * *

ORDER DENYING MOTION TO STRIKE

Order January 17, 1938, denying plaintiffs' motion to strike answers and setting motion to dissolve injunction for argument January 19, 1938.

ORDER DISSOLVING INJUNCTION, ETC.

Order entered January 20, 1938, as follows: Cause coming on to be heard on motion of defendants, Journeymen Barbers International Union of America, Local 548 Journeymen Barbers' Union and Frank Rango etc., also Hairdressers and Cosmetologists' Union, Local 548-D; Patsy Trotta, individually and as officer of Union; Sadie Murphy, [fol. 25] Felix Rose and N. C. Iannella, individually and as officers of Union, to dissolve injunction entered against them, and to dismiss the above cause for want of equity on face of complaint, and for leave to file their written suggestions of damages instanter. The court having jurisdiction of the subject matter and the parties and having heard arguments of course, it is ordered: that the injunction is dissolved; that the complaint is stricken for want of equity on its face; the defendants are given leave to file written suggestions of damages instanter; that the cause is set for hearing on February 14, 1938, for the purpose of hearing evidence and assessing damages. Plaintiff is given leave to file an amended complaint within 20 days; defendants to plead within 20 days thereafter.

* * * * * * *

[fol. 26] ORDER DISMISSING CAUSE

Order entered February 15, 1938; recites: cause came on to be heard on suggestion of damages filed by Journeymen Barbers' International Union Local 548 of Journeymen Barbers' International Union, and Local 548D of Hairdressers and Cosmetologists' Union; and the court having heard arguments of counsel and having heard evidence in open court, finds: (1) the court had jurisdiction of the parties and subject matter; (2) that on July 17, 1937, temporary injunction issued against the above moving parties (defendants); (3) that on motion of said defendants the

temporary injunction was dissolved on January 20, 1938; (4) that the equities are in all respects with the defendants; (5) that the above defendants are as a matter of law entitled to damages for the wrongful issuance of the temporary injunction; that they have been damaged by the plaintiffs to the extent of being obligated to pay and having paid out sums of money to Stanton & Stanton for legal services necessarily rendered in connection with the dissolution of said temporary injunction; (6) that the reasonable value of the legal services rendered as detailed by testimony heard before me this date in behalf of Journeymen Barbers' International Union of America and Local 548 of said Union, is $466.67; in behalf of Local 548-D of Hairdressers and Cosmetologists' Union is $233.33; (7) it is ordered that defendants, Journeymen Barbers' International Union and Local 548 of said Union, and Hairdressers and Cosmetologists' Union, Local 548-D, are entitled to damages from plaintiff by reason of the wrongful issuance of the injunction, in the amount set forth; (8) it is further ordered that the above defendants shall be [fol. 27] paid by plaintiffs the total sum of $700.00, and in default of payment, that execution issue; (9) plaintiffs having failed to file an amended complaint within 20 days from January 20, 1938, as per order entered on said date, and the court being advised by attorneys for the plaintiff that plaintiffs will not file an amended complaint, but elect to stand by their original complaint stricken on January 28, 1938, for want of equity on its face, it is therefore ordered that the above cause be and the same is hereby dismissed at plaintiffs' costs as of this date.

* * * * * * * *

[fol. 28] ANSWER OF JURISDICTIONAL BARBERS INTERNATIONAL UNION

Sworn answer filed July 27, 1937, by Journeymen Barbers International Union of America, referred to as International Union, Journeymen Barbers International Union of America, Chicago Local 548, referred to as Local 548, and Frank Rango, etc., to complaint sets forth: that said International Union is voluntary, unincorporated, non-profit, non-stock labor association composed of different barber, hair-dresser

and cosmetologist local unions represented by delegates elected to International Union; that said local unions are formed for purpose of engaging in collective bargaining as to hours, wages and conditions of employment on behalf of respective members, secure them employment and trade recognition for said unions. Said local unions are independent of one another, autonomous in nature and have sole and exclusive control over all their respective local affairs; Local 548 is voluntary, unincorporated non-profit, non-stock labor union; Frank Rango is Sixth Vice-President of International Union and Secretary Treasurer of Local 548; defendants have no knowledge, information or belief upon which to predicate answer as to averments in paragraphs 1, 2, 4, 11 to 17, 20 to 30, 32 to 42, 44 to 48, 50 to 78, all inclusive, 81, 82, 84, 86, 87, and 90 of com-
[fol. 29] plaint, except as set forth in their answer, as to: ownership, location or nature of Manor Beauty Salon; persons employed therein; patrons thereof; undertakings, efforts, or activities of any of other defendants, or effects thereof; dealings or relationships of plaintiff Swing with any of defendants, or others; abilities, relationships, wishes, desires or earning capacities of employed plaintiffs, or the hot water or towel situations or circumstances; and states that Hairdressers and Cosmetologists Union, Local 548D, referred to as Local 548D, is voluntary, unincorporated labor union, Patsy Trotta, Sadie Murphy, Felix Rose and N. C. Ianella are affiliated with Local 548D only, Local 548 is chartered by International Union; denies that Local 548 operates under any secret agreement with International Union, but pursuant to its constitution, which grants it local independence, and pursuant to its own constitution and by-laws; International Union is chartered by American Federation of Labor, referred to as the A. F. of L., but does not operate under any secret agreement with said A. F. of L.; but as independent, chartered, International Union, pursuant to its constitution, which is open to public for examination.

That they believe the A. F. of L. has its principal offices in Washington, D. C. and branch in Chicago; principal office of Chicago Federation of Labor, referred to as the C. F. of L. is 666 Lake Shore Drive, Chicago; principal office of International Union is Indianapolis, with local office and Sixth Vice-President representative at 100 N. La Salle Street, Chicago; Local 548 offices at 100 N. La Salle Street,

Chicago, and Local 548D at Hotel La Salle, Chicago; Local [fol. 30] 548D is not under supervision of Local 548, and Local 548 is not under supervision of International Union, nor is International Union under supervision of A. F. of L.; Local 548 is affiliated but not in any way controlled by C. F. of L.; Frank Rango's only affiliation is as Sixth Vice-President of International Union and as Secretary-Treasurer of Local 548; none of other individual defendants have any affiliation with the International Union nor Local 548; neither International Union, Local 548 nor any officer or representative of International Union or Local 548 participated or assisted in things complained of against Local 548D or its representatives and agents, nor have they knowledge of said things or acts; whatever activities 548D is engaged in are of own private volition; Patsy Trotta, Sadie Murphy, Felix Rose and N. C. Ianella are not business agents of International Union nor Local 548, but representatives of Local 548D only; that these defendants deny they engaged in conspiracy or caused or participated in picketing, deny engaging or being associated in action of any sort against plaintiffs; deny they are engaged in activities against plaintiffs; deny animosity against Swing and that they are attempting to destroy his business and state that *that* only since Swing recently brought himself to their attention, did they formulate thought and belief, predicated upon his statements and actions, that he is unfair to union labor and is attempting to conceal anti-social and anti-union activities behind petticoats of employees, dominated, coerced, intimidated and controlled by him; and deny each and every material allegation in complaint charged against them. Prayer for dismissal of complaint and verification.

[fol. 31] Answer of Hairdressers and Cosmetologists Union

Sworn answer of Hairdressers and Cosmetologists Union, Local 548D, Patsy Trotta, Sadie Murphy, Felix Rose and N. C. Ianella, filed August 26, 1937, sets forth: that American Federation of Labor is voluntary, unincorporated, non-profit, non-stock trade and labor association composed of different national and international trade and labor unions represented therein by delegates elected thereto; said trade and labor unions are likewise unincorporated, non-profit,

non-stock associations, composed of local unions represented therein by delegates elected by local unions to international, which local unions are likewise unincorporated, non-profit and non-stock associations; object of the A. F. of L. in part is to encourage formation of local trade and labor unions, based upon a strict recognition of autonomy of said unions, closer federation of such societies through organization of central trade and labor unions in every city, and promotion and advancement of such bodies.

Journeymen Barbers International Union of America, is a voluntary, unincorporated, non-profit, non-stock labor association composed of many barber and cosmetologist local unions throughout United States and Canada, which local unions are represented therein by delegates elected by them to International Union; among said International Union locals are Journeymen Barbers International Union of America, Chicago Local 548, sometimes referred to as Barbers Union, and Hairdressers and Cosmetologists Union, Local 548D, sometimes referred to as Cosmetologists Union; all said local unions are formed for purpose, among other things, of engaging in collective bargaining as to hours, [fol. 32] wages and conditions of employment in behalf of respective members, to secure employment for memberships and recognition of said unions; the Chicago Federation of Labor is a voluntary, unincorporated, non-profit, non-stock central trade and labor association composed of delegates elected thereto by local unions in Chicago; said International Union is chartered by A. F. of L.; said Barbers and Cosmetologists Unions are chartered by said International Union and are affiliated with C. F. of L. which is affiliated with A. F. of L.; said Barbers and Cosmetologists Unions are independent of one another, autonomous in nature and action and have sole and exclusive jurisdiction and control over their respective local affairs.

Frank Rango is Sixth Vice-President of International Union and Secretary-Treasurer of Local 548; Patsy Trotta is Secretary-Treasurer, Sadie Murphy is President and Felix Rose and N. C. Ianella are representatives of Local 548D only. Defendants deny that International Union operates under a secret agreement with A. F. of L.; that Barbers or Cosmetologists Unions operate under any secret agreements between themselves or with International Union; that said C. F. of L. operates under secret agreement with A. F. of L.; and state that Barbers and Cosmetologists

Unions operate pursuant to said International Union's Constitution and By-Laws which recognize their absolute autonomy and local independence of action, and pursuant to their own respective Constitution and By-Laws, and that said International Union operates as an independent, autonomous, chartered International Union pursuant to its own [fol. 33] constitution and by-laws, which are open to public inspection; said Cosmetologists Union, its officers, directors and members are not under supervision or control of Barbers Union nor is Barbers Union, its officers, directors or members under supervision or control of International Union, nor is International Union nor said C. F. of L. under supervision or control of A. F. of L.; said Barbers Union and Cosmetologists Union are affiliated with, but not in any way controlled by C. F. of L.; they believe Swing is owner of Manor Beauty Salon in Chicago; that the plaintiff employees constitute all his employees in said shop; that A. F. of L. has principal office in Washington, D. C., and branch in Chicago; that C. F. of L. has principal office at 666 Lake Shore Drive, Chicago; that International Union has principal offices in Indianapolis with local office and Sixth Vice-President representative at 100 N. La Salle Street, Chicago; that Local 548 has office at 100 N. La Salle Street, Chicago; that Local 548D has its office in Room 215, Hotel LaSalle, Chicago; that Swing has carried on beauty shop business for more than one year at 5558 W. North Avenue, Chicago; that said employees have been for some time employed by him; that he occupies entire former bank building about 50 x 100 feet and has invested upward of $15,000 in building, equipment, furnishing and advertising said place.

Defendants have no knowledge or belief upon which to predicate answer as to averments that Swing built up and created a valuable clientele and good will of great volume and deny any injury done his employees and that they voluntarily joined him in filing this complaint; state that said Cosmetologists Union was chartered January 20, 1937, for [fol. 34] union purposes and not to compel employees of beauty shops to join it; that it was many times requested and was induced by Swing, shortly after its inception, to unionize beauty shops in Austin, Chicago, Illinois, being community wherein his shop is located, for purpose, as he put it, of stabilizing conditions in said community; that he offered to financially assist and compensate said Union in and for such activities and agreed to unionize his shop as

soon as said Union proved itself by organizing fifty per cent of beauty operator employed in said community, and agreed to cooperate in stabilization of conditions in beauty culture industry in said community. Said Union refused said financial assistance and compensation but agreed to undertake unionizing of beauty shop operators in Austin and to bring about stabilization of conditions in beauty trade in said community, pursuant to said Swing's request and agreement to unionize his shop and cooperate in stabilization as aforesaid. In said Austin community are employed approximately 200 beauty shop operators of whom over ninety per cent are members in good standing of the Cosmetologists Union. Upon unionization of said operators, said Union succeeded in bringing about recognition of said Union by, and a spirit of friendly cooperation with and among beauty shop owners in community. Said owners, upon Union's assurance that Swing would unionize his shop and cooperate with them proceeded to stabilize prices, hours, working conditions and wages to end that price wars to attract volume business were to be eliminated; service was not to be rendered public below minimum prices within the reach of vast majority of people—at cost plus reasonable profit on return [fol. 35] of said owners' respective investments which prices were arrived at after scientific survey of conditions in industry to enable owners to comply with minimum wage and maximum hour laws for women of Illinois; to enter into fair wage agreements with employees and thus avoid and preclude strikes, and eliminate wilful and unfair trade practices then prevailing in industry in said community which have effect of unsettling and depressing profession in Austin, none of foregoing being for purpose of establishing a trade monopoly; that thereupon Swing was called upon to carry out his agreement aforesaid. Swing then requested aforesaid Cosmetologists Union officials that they maintain prices they succeeded in having all other beauty shop owners in said community set, as aforesaid, as minimum prices to October 1, 1937, and to permit Swing during said period to operate his shop at prices below said minimum prices; and offered to pay said Union's representative $500 if they would bring about such condition, which request and offer was refused by these defendants. Said Ross W. Swing never permitted said Cosmetologists Union representatives to see employees, saying he himself would see to it that they were unionized as aforesaid. Neither Trotta, Rose, Ianella

or any other Union representative spoke with Swing's employees. They never refused to join said Union but Swing prohibited them joining. His employees are dissatisfied with wages and conditions of employment; that Swing advised them if they permitted him to fix up things for them, their incomes would be increased and competitive shops destroyed; that if they joined Cosmetologists Union without his consent, they would be discharged; that by reason of [fol. 36] dishonest and fraudulent methods and inducements of Swing in respect to matter in which alleged redress is sought by plaintiffs, said defendants are greatly injured in that their relations with all other beauty shop owners and operators in Austin are seriously affected; that employees of said Swing, in violation of minimum-wage and maximum hour law, aforesaid, which provides for $16.50 per week minimum and forty-eight hours maximum, are employed strictly on commission basis and work approximately sixty hours each per week, whereas said Cosmetologists Union requirements provide for guaranteed weekly minimum wage above that set pursuant to Illinois Minimum Wage Law for Women and Minors, in force July 1, 1933, and for eight hour day, pursuant to the Women's Eight Hour Law, effective July 1, 1937; that in order to effectuate their purpose, it is necessary for said Union to have as many as may be in same trade in same community united because in competition between employers they are bound to be affected by standard of wages and hours of employment of their trade in neighborhood.

It is necessary for Cosmetologists Union to be interested in wages of those not members of said Union and in conditions under which they work as in its own members because of influence of one upon other. All engaged in trade are affected by prevailing rates of wages and hours of employment. Economic organization is not based on single shop. Collective bargaining can only be maintained if union conditions prevail not only in some single shop, but generally. That they deny: that any of said Swing employees ever joined other Unions similar to Local 548D, or that [fols. 37-57] they believe minimum wage law will assure them reasonable wage and maximum hours, or that said employees believe or ever stated to Swing that efforts of Trotta, Rose and Iannella are not for interest of Union workers in trade; that said Swing made said averments pursuant to his trickery and fraud upon said Union and

pursuant to his plan to smother competition and gain undue advantage to himself. They don't know as to competency of his employees, do not seek their discharge but their unionization for protection and betterment of conditions for all employees in trade. Swing has ordered his employees not to join said Union; that there does exist a dispute with Swing pertaining to terms and conditions of employment in that by reason of a community of economic interest in Austin, in the beauty culture industry, as aforesaid, it is essential for welfare of Cosmetologists Union that employees of Swing be unionized and paid scale of wages and work hours commensurate with those of other employees in profession; that these defendants never had more than one picket in front of or in vicinity of his shop. Statement on the sign of said picket read: "This Beauty Shop refuses to deal with Hairdressers & Cosmetologists Union, Local 548D, American Federation of Labor and Chicago Federation of Labor," and not as averred, which publication is true and correct. Defendants never interfered with or addressed any customers in any way, and deny anyone ever rushed and grabbed any customer by the arm, or threatened or menaced one; and deny any malicious or ulterior motive against plaintiffs; and each and every material allegation in complaint charged against them or any of them. Prayer for dismissal of complaint, and verification.

* * * * * * *

[fols. 58-63] CERTIFICATE OF CLERK

Certificate of John E. Conroy, Clerk of Circuit Court of Cook County, dated April 22, 1938, that above and foregoing transcript of record, etc., is true, perfect and complete transcript according to praecipe filed March 5, 1938, and additional record as per praecipe filed March 8, 1938.

[fol. 64] IN APPELLATE COURT OF ILLINOIS

Abstract of Record

JUDGMENT

Appellate Court judgment December 21, 1938, that there is error in nisi prius court orders of January 20 and Febru-

ary 15, 1938, and ordering same reversed, annulled, and set aside, and taxing costs against appellees.

ORDER CERTIFYING CAUSE TO SUPREME COURT

Order January 9, 1939, certifying that cause involves questions of law of such importance on account of principal and collateral interests involved as that it should be passed upon by Supreme Court, and granting appellees leave to appeal to Supreme Court conditioned on filing appeal bond in sum of $250 within ten days.

[fols. 65-67] CLERK'S CERTIFICATE

Certificate of Sheldon W. Govier, Appellate Court Clerk of First District of Illinois, dated January 17, 1939, that foregoing transcript is a true copy of the final order, judgment and all other proceedings and appeal bond of Appellate Court.

[fol. 68] IN SUPREME COURT OF ILLINOIS

Docket No. 25083—Agenda 14—April, 1939

Ross W. SWING et al., Appellees,

v.

THE AMERICAN FEDERATION OF LABOR et al., Appellants

OPINION—Filed June 19, 1939

Mr. Justice SHAW delivered the opinion of the court:

The plaintiffs in this cause are the owner and all of the employees who are jointly conducting a beauty parlor in the city of Chicago, and the cause of their complaint for an injunction arises from interference with that business by the defendants. There is no question of fact for decision as the cause was disposed of on a motion to strike which admitted all facts well pleaded. In the circuit court the motion to dismiss was sustained and the complaint dis-

missed for want of equity. The Appellate Court reversed this judgment of the circuit court and granted a certificate of importance, permitting the cause to come before us on this further appeal.

The facts alleged and admitted are substantially as follows: April 30, 1937, four persons claiming to be officials and business agents of Local No. 548-D of the Hairdressers and Cosmetologists Union called upon Swing and demanded that he require all of his employees to join that union, to which none of them belonged, and to which none of them wished to belong. Swing took a neutral position in the matter, permitted the agents to mingle with his employees, and permitted the employees to do as they pleased. The plaintiffs all agree that there was not then and has not since been any labor difficulty or dispute; the employees were and are satisfied with wages, hours and working conditions.

Notwithstanding these satisfactory conditions and obvious harmony among the plaintiffs, the place of business where they all obtained a livelihood was beset by pickets. On April 30, 1937, male and female pickets appeared on the street in front of the shop carrying large signs with the legend: "This Beauty Shop is Unfair to Organized Labor, Hairdressers and Cosmetologists Union Local 548-D, American Federation of Labor and Chicago Federation of Labor." This was continued during that part of the day and evening when the place was open for business. The complaint charges that the statement on these signs was untrue and malicious, and although, as to malice, this is a conclusion of the pleader, the very fact that the employer and all of his employees joined in this suit sufficiently establishes it.

It is further charged and admitted that these pickets directly, and in some cases forcibly interfered with customers; that one lady leaving the shop was grabbed by the arm and in a threatening manner told that she had better not go in the place again because it was a "scab" shop; that another lady customer was likewise accosted and told that she ought to be shot for going into that "scab" shop. It is also charged and admitted that all of these pickets were strangers to the employer, that none of them were either past or prospective employees in the place of business and that the entire proceeding was designed and intended to force the employer to force his employees to join that particular union, or in the alternative suffer a destruction of

his business, with a consequent loss of employment and means of livelihood to all of the plaintiffs. The Appellate Court succinctly states: "The question presented for determination is whether a labor union, in which none of its members are present, past or expectant employees of an employer, has a right to picket his place of business for the purpose of compelling the employees, who do not wish to join a union, to do so."

The appellants divide their brief into two main contentions, only one of which requires consideration in this opinion. The first point which they urge, that the Illinois Anti-Injunction act of 1925 prohibits the issuance of injunctions in a case such as this, was fully considered and decided by us in Meadowmoor Dairies, Inc. v. Milk Wagon Drivers' Union of Chicago, No. 753, (No. 24890). The opinion in that case was filed while the present appeal was pending and in it we held the act of 1925 has no application to cases wherein there is no dispute between employer and employee. In that case all of the arguments presented by the appellants in this case were fully considered and it is now unnecessary for us to repeat what we then said.

[fol. 69] The second contention of the appellants concerns the constitutional right to freedom of speech. It is contended by them that section 4 of article 2 of the constitution of Illinois and the fourteenth amendment to the constitution of the United States protect them in their exhibition of the placards and signs derogatory to the plaintiffs' business and intended to destroy it. It is said that for such a wrong, if it be a wrong, or if the statements be untrue, the remedy must be by civil action or by prosecution for criminal libel. The implication of this argument is that the constitutional guaranty of freedom of speech extends so far as to make it a guaranty of freedom to libel; that under this constitutional provision those other provisions guaranteeing due process and equal protection of law must be submerged. Our liberties and means of livelihood are not held by so slender a thread nor a title so tenuous. The right of one group to organize for the advancement of its own ends is exactly equal to but no greater than the right of other citizens peaceably to pursue their own lawful occupations. In the case before us the public is told that the employer is unfair to organized labor, when the contrary is the fact, it being admitted that he is entirely willing to have his employees organize if they wish. The plaintiffs, both em-

ployer and employees, under the equal protection of the law, are entitled freely to pursue their lawful business, yet it is claimed that that business may be destroyed by a libelous boycott in the name of freedom of speech. Under the basic principles of due process a person may not be punished nor his property and business destroyed without a day in court on proper charge and notice with an opportunity to be heard. Yet it is here contended a self-organized group may determine that the plaintiffs may no longer be permitted to earn an honest living by lawful means and forthwith proceed by libelous banners to execute their death sentence.

Appellants insist that the case of Vulcan Detinning Co. v. St. Clair, 315 Ill. 40, sustains their position in regard to freedom of speech, but except for certain language in the opinion which might appear favorable to them, it is far from the point. In that case an injunction was issued in connection with a labor controversy restraining the use of certain violence and threats. No appeal was taken from the decree granting this injunction and it became final. Thereafter an article was published in a newspaper and signed by the union which was deemed to be a violation of the injunction previously granted. In this court only two things were held: (1) That no appeal having been taken from the order granting the injunction it became final and we were not at liberty to consider or decide the propriety of its having been issued, and (2) that the publication did not, in fact, violate the injunction. No further discussion of the case is necessary or appropriate.

It is unnecessary for us to decide whether or not a court of equity will enjoin a threatened libel because that kind of a case is not before us. We have here for consideration an accomplished and continuing libel which is quite a different thing, and we fail to see that it is in any way different from any other form of continuing trespass. To say that a court of equity lies supine before such a wrong where there is obviously no adequate remedy at law is to deny to equity its most fundamental and essential power—the power to right that which is wrong and protect that which must otherwise be unlawfully destroyed.

In the Meadowmoor case, supra, we pointed out that all constitutional rights are co-equal and must be harmonized with each other, no one such right being permitted to override or submerge another. What we then said we now

adhere to and the rules then announced apply to freedom of speech as well as any other constitutional right. In People v. Lloyd, 304 Ill. 23, we called attention to the fact that there is a wide difference between freedom of speech and an unbridled license of speech. We now say that freedom of speech does not include freedom to libel or slander. There is no theory upon which the constitution can be shaped into a mantle for wrong and where the right and wrong of the matter are plainly apparent the right must prevail and the wrong be prevented. It is right for men to earn their living by honest means within the law and it is wrong for others either singly or in combination to prevent such honest labor by any unlawful means whether it be force, violence or libel. These principles are self-evident [fol. 70] and require neither stress of words nor citation of authority for their support.

We have before us in this case an effort by force to deprive all of the plaintiffs of their means of livelihood and compel them to exist on terms prescribed by others without lawful authority to prescribe them. We have in this record two instances of direct force applied to customers. We have the force of threats and the supposedly powerful force of a boycott to be brought about by signs and banners. A State or nation ceases to be sovereign if it tolerates within it any force other than its own, and that force must be such as is established by law, directed by the courts, observing the principles of due process and equal protection of the law. To whatever extent these rules are violated we have lawlessness and under such circumstances a court of equity will not pick and choose among the unlawful acts and threats but will enjoin the whole scheme.

We are convinced that the Appellate Court arrived at a correct decision and its judgment is affirmed.

Judgment affirmed.

CONCURRING OPINION

Mr. Justice STONE, specially concurring:

I agree with the conclusion reached in this opinion but not with all that is said therein.

CONCURRING OPINION

Mr. Justice JONES, also specially concurring:

I agree with the result reached in this opinion. I cannot agree with the harshness of the criticisms. The facts do not warrant such severity.

Mr. Justice FARTHING, dissenting.

[fol. 71] IN SUPREME COURT OF ILLINOIS

Docket No. 25083. Agenda 14. April, 1939

Ross W. SWING et al., Appellees,

v.

THE AMERICAN FEDERATION OF LABOR et al., Appellants

DISSENTING OPINION

Mr. Justice FATHING, dissenting:

Contrary to the intimation in the majority opinion, this case does not involve the question of restraining violence. Appellants admit that an injunction against violence is proper. The sole issue is whether the circuit court erred in enjoining peaceful picketing. The fact that violence has occurred along with picketing is no reason for enjoining further peaceful picketing. In Fenske Bros. v. Upholsters Union, 358 Ill. 239, at pages 259, 260, we said: "We come, now, to a consideration of the action of the chancellor in restraining the acts sanctioned by the statute, and in particular the suggestions of appellants in their answer to the bill. Inasmuch as the act is not unconstitutional, it necessarily follows that the chancellor erred in restraining the doing of any of the things sanctioned therein. In addition to the things enumerated in the statute, the answer suggested that the decree ought to provide that nothing therein contained shall be construed to restrain defendant unions from assigning two of their members or representatives to be, peaceably and without threats or intimidation, upon the public thoroughfares adjacent to the respective places of business of complainants for the purpose of carrying signs

or placards announcing the strike and that the complainants are not employing union labor. Evidently it is impracticable for the legislature to prescribe in detail what constitutes peaceable persuasion. The power to determine whether or not acts complained of are within the terms of the statute was properly left in the courts. * * * It may well be said that the carrying of placards containing threats, malicious, abusive or designedly false statements is anything but peaceable persuasion. It may also be said that signs containing no such statements may be carried so offensively or with such annoyance as to amount to intimidation and thus be unlawful. On the other hand, carrying signs merely announcing the strike and that an employer is not employing union labor, with the single purpose of securing accessions to the ranks of a union, may be wholly peaceable persuasion. If not unlawful it may not be restrained. * * * The mere fact that acts of violence had been previously committed would of itself furnish no justification for enjoining legal acts of peaceable persuasion."

The decision in this case should depend on the answer to two questions: (1) Does the Illinois Anti-Injunction act (Ill. Rev. Stat. 1937, chap. 48, par. 2a) prevent the issuance of an injunction against peaceful picketing where there is no employer-employee relationship? (2) If it does, is it constitutional? There is no doubt about the answer to the second question. The Norris-LaGuardia act, (29 U. S. C. A. secs. 101-115, Supp. 1938,) which specifically provides that no employer-employee relationship need exist, has been upheld. (Lauf v. Shinner Co. 303 U. S. 323; New Negro Alliance v. Sanitary Grocery, id. 552.) The Wisconsin statute, which is similar to the Norris-LaGuardia act, has also been held constitutional. (Senn. v. Tile Layers' Union, 301 U. S. 468.) In the Senn case the United States Supreme Court said: "The unions acted, and had the right to act as they did, to protect the interests of their members against the harmful effect upon them of Senn's action. Compare American Steel Foundries v. Tri-City Central Trades Council, supra, 257 U. S. 184, 208, 209, 42 Sup. Ct. 72, 78, 66 L. ed. 189, 27 A. L. R. 360. Because his action was harmful, the fact that none of Senn's employees was a union member, or sought the union's aid, is immaterial. * * * There is nothing in the Federal constitution which forbids unions from competing with non-union concerns for customers by means of picketing as freely as one merchant competes with

another by means of advertisements in the press, by circulars, or by his window display. Each member of the unions, as well as Senn, has the right to strive to earn his living. Senn seeks to do so through the exercise of his individual skill and planning. The union members seek to do so through combination. Earning a living is dependent upon securing work; and securing work is dependent upon public favor. To win the patronage of the public each may strive by legal means. Exercising its police power, Wisconsin has declared that in a labor dispute peaceful picketing and truthful publicity are means legal for unions. It is true that disclosure of the facts of the labor dispute may be annoying to Senn even if the method and means employed in giving the publicity are inherently unobjectionable. But such annoyance, like that often suffered from publicity in other connec- [fol. 72] tions, is not an invasion of the liberty guaranteed by the constitution. * * * It is true, also, that disclosure of the facts may prevent Senn from securing jobs which he hoped to get. But a hoped-for job is not property guaranteed by the constitution. And the diversion of it to a competitor is not an invasion of a constitutional right."

The chief dispute centers around the question whether the Illinois Anti-Injunction act applies only to cases where an employer-employee relationship exists. As determinative of this issue the majority opinion relies alone on Meadowmoor Dairies Inc. v. Milk Wagon Drivers' Union, 371 Ill. 377. That case held that the Illinois statute was patterned after section 20 of the Clayton act (29 U. S. C. A. sec. 52) which had been construed to be inapplicable where there was no dispute between employer and employee. However, even a casual examination of the two statutes shows a material difference. Section 20 of the Clayton act reads: "That no restraining order or injunction shall be granted by any court of the United States, or a judge or judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment," etc. The Illinois act provides: "No restraining order or injunction shall be granted by any court of this State, or by a judge or judges thereof in any case invovling or growing out of a dispute concerning terms or conditions of employment, enjoining or restraining any person or persons, either singly or in concert * * * from

peaceably and without threats or intimidation being upon any public street, or thoroughfare or highway for the purpose of obtaining or communicating information," etc. The United States Supreme Court, in Duplex Printing Press Co. v. Deering, 254 U. S. 443, held that the words "in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment" required the existence of an employment relationship. It is significant that the Illinois legislature when it enacted the Anti-Injunction act, eleven years after the passage of the Clayton act and four years after the Supreme Court's construction of the quoted words, left them out. There was much dissatisfaction among the labor unions with the restrictive interpretation given section 20 of the Clayton act by the courts. This resulted in the passage of the Norris-LaGuardia act which remedied the defect of the Clayton act. (See New Negro Alliance v. Sanitary Grocery, supra.) I assume, as the majority opinion does, that the legislature knew the interpretation given by the United States Supreme Court to the quoted words of section 20 of the Clayton act. The only explanation that can logically be given to the omission of those words from the Illinois act is that the legislature did not intend that it be limited to disputes between the employer and his employees. All of this was ignored in the Meadowmoor Dairies case, supra.

As a practical matter there can be no doubt but that a labor dispute exists in the principal case. The refusal of an employer to operate a closed shop tends to lessen the advantages a union offers to its members. If the union is unable to enforce a uniform standard of wages in an industry, the employers who pay higher wages will sooner or later be compelled to lower wages or go out of business. The tendency of a non-union low-wage shop is to depress the wages of an entire industry. Thus the defendants in the principal case are only seeking to maintain the higher standard of wages and working conditions which it is the purpose of the union to give them. Such a purpose should be commended rather than condemned. It is unnecessary to consider the question of free speech which is virtually all the majority opinion covers. Here we have a statute obviously intended by the legislature to prevent the issuance of an injunction in a case such as the one before us. This statute as so construed is doubtless constitutional and

should be enforced. While there is no violence, the taking of one customer by the arm, remonstrating with her and another customer for patronizing the place, and the legend on the placards to the effect that the shop was unfair to union labor, are combined and designated as unlawful acts and a libel. Disregarding this sophistry the entirely peaceable picketing should not have been enjoined in this case. Therefore I dissent.

[fols. 73-74] IN SUPREME COURT OF ILLINOIS

No. 25083

ROSS W. SWING, IRENE BOIVIN, NAN CHAPMAN, et al., Appellees,

vs.

AMERICAN FEDERATION OF LABOR, JOHN FITZPATRICK, CHICAGO FEDERATION OF LABOR, et al., Appellants

Appeal from First District

JUDGMENT—June 19, 1939

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the Judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the Judgment of the Appellate Court aforesaid, Be Affirmed in All Things and Stand in Full Force and Effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said Appellees recover of and from the said Appellants Costs by them in this behalf expended, to be taxed, and that they have execution therefor.

Clerk's Certificate to foregoing paper omitted in printing.

[fols. 75-82] In Supreme Court of Illinois

[Title omitted]

Order Denying Rehearing—October 13, 1939

And now on this day the Court having duly considered the petition for rehearing filed herein and the Court being now advised in the premises doth overrule the prayer of the petition and denies a rehearing of this cause.

[fol. 83] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 84] Supreme Court of the United States

Order for Stay of Mandate Without Bond

Upon consideration of the motion of counsel for Petitioners in the above entitled cause, and good cause therefor having been shown:

It is Now Here Ordered, that the mandate of the Supreme Court of Illinois in the above entitled cause be stayed, without bond, until December 21, 1939, and if on or before December 21, 1939, a petition for writ of certiorari shall be filed with this Court, such mandate is hereby stayed until final action on such petition has been taken by this Court.

Wm. O. Douglas, Associate Justice of the Supreme Court of the United States.

Dated this 15th day of November, 1939.

[fol. 85] Supreme Court of the United States

Stipulation of Portions of Record Not to be Printed—Filed December 18, 1939

The parties to this cause, through their respective attorneys, hereby stipulated to omit from the printed record all matter not explicitly designated below as not essential to a consideration of the questions presented by the petition for writ of certiorari; and that the printed record shall contain the following matter:

1. Complaint, pages 4-22.

2. Injunctional order by circuit court, of July 17, 1937, pages 22-24.

3. Order by circuit court of January 17, 1938 denying plaintiffs' motion to strike defendant's answers, page 24.

4. Order by circuit court of January 20, 1938 dissolving injunction and giving leave to file amended complaint, pages 24-25.

[fol. 86] 5. Order by circuit court of February 15, 1938 dismissing cause, pages 26-27.

6. Sworn answer of Journeymen Barbers International Union, filed July 27, 1937, pages 28-30.

7. Sworn answer of Hairdressers and Cosmetologists Union, filed August 26, 1937, pages 31-37.

8. Certificate of Clerk of Circuit Court, page 58.

9. Appellate Court judgment, December 21, 1938, page 64.

10. Appellate Court order of January 9, 1939, certifying cause to Supreme Court of Illinois, page 64.

11. Certificate of Appellate Court Clerk of January 17, 1939, page 65.

12. Opinion, concurring opinions and dissent, in Supreme Court of Illinois, pages 68-72.

13. Judgment of Supreme Court of Illinois, June 19, 1939, page 73.

14. Denial of petition for rehearing by Supreme Court of Illinois, October 13, 1939, page 75.

15. Certificate by Clerk of Supreme Court of Illinois November 24, 1939, page 83.

16. Stay of mandate by order of Supreme Court of the United States, page —.

17. This stipulation, page —.

Walter F. Dodd, Daniel D. Carmell, Attorneys for Petitioners; Myer N. Rosengard, Samuel A. Rinella, Attorneys for Respondents.

December 4, 1939.

Blank Page

[fol. 36] UNITED STATES OF AMERICA,
State of Illinois, ss:

At a term of the Supreme Court, begun and held at Springfield on Tuesday, the Sixth day of February in the year of our Lord One Thousand Nine Hundred and ——, within and for the State of Illinois,

Present: Francis S. Wilson, Chief Justice; Justice Clyde E. Stone, Justice Paul Farthing, Justice Walter T. Gunn, Justice Norman L. Jones, Justice Elwyn R. Shaw, Justice Loren E. Murphy, John E. Cassidy, Attorney General; Warren C. Murray, Marshal. Attest: Adam F. Bloch, Clerk.

Be it remembered, that to-wit, on the 8th day of March, A. D. 1940, the same being one of the days in vacation after the term of Court aforesaid there was filed in the office of the Clerk of the Supreme Court of Illinois by American Federation of Labor, et al., plaintiffs in error, duly certified transcript of proceedings had in the Appellate Court of the First District, and afterwards, to-wit, on the 12th day of March, 1940, Abstracts of Record were filed in the office of the Clerk of the Supreme Court, a copy of such Abstract of Record being in the words and figures as follows, to-wit:

[fol. 37] Abstract of Record

IN THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

No. 40195

ROSS W. SWING, IRENE BOIVIN, NAN CHAPMAN, et al.,
Appellants,

vs.

AMERICAN FEDERATION OF LABOR, JOHN FITZPATRICK, CHICAGO FEDERATION OF LABOR, et al., Appellees.

DECREE

This cause again coming on to be heard, and it appearing:

(1) That this Court in this case, on December 21, 1938, reversed, annulled and set aside orders of the Circuit Court of Cook County of January 20, 1938, and February 15, 1938, without remandment, and taxed costs against ap-

pellees, American Federation of Labor, et al.; the Circuit Court order of January 20, 1938, being an order dissolving an injunction against American Federation of Labor, et al., striking the complaint of Swing et al. for want of equity on its face, setting date for assessment of damages and giving appellants time within which to file an amended complaint, and the order of February 15, 1938, being an order assessing damages and dismissing the cause on appellants' election to stand on their original bill:

(2) That the Supreme Court of Illinois in this case, bearing Docket No. 25,083, in that Court, affirmed judgment of [fol. 38] this Court and has transmitted to this Court its judgment to this effect by mandate bearing date of June 19, 1939;

(3) That this Court and the Supreme Court of this State have held in this case, that, under the law of this state, peaceful picketing or peaceful persuasion are unlawful when conducted by strangers to the employer (i. e., where there is not a proximate relation of employees and employer), and that appellants are entitled in this case to relief by injunction against the threat of such peaceful picketing or persuasion by appellees; and,

(4) That appellants have therefore maintained their complaint, and the equities of the case are with the appellants;

It is hereby ordered, adjudged and decreed, in accordance with the mandate of the Supreme Court of Illinois:

That the defendants, American Federation of Labor; John Fitzpatrick, individually and in his official capacity; Chicago Federation of Labor; John Fitzpatrick, President, and Anton Johanson, Vice-President, in their respective official capacities and individually; also all members, officers, etc., of the American Federation of Labor and Chicago Federation of Labor, whose names are unknown to plaintiffs; Journeymen Barbers' International Union of America; Frank Rango, Sixth Vice-President, individually and in his official capacity; and all other members of said Union, whose names are unknown to the plaintiffs; Journeymen Barbers' International Union of America, Local 548; its members whose names are unknown to the plaintiffs, and Frank Rango, Secretary and Treasurer, individually and in his official capacity; Hairdressers and Cosmetologists Union, Local 548-D; and its members; Patsy Trotta, Sec-

[fol. 39] retary and Treasurer; and Saide S. Murphy, President; individually and in their official capacity, and all other persons, as agents, representatives, members, attorneys of the defendants and all persons acting in concert with said trade union defendants and individual defendants, are hereby permanently enjoined and restrained from:

(a) Picketing or maintaining any picket or pickets at or near the place of business of plaintiff (Swing) at 5558 West North Ave.

(b) Patrolling or congregating in front or in the vicinity of plaintiff's business, in furtherance of pocketing;

(c) Exhibiting or causing to be exhibited any sign or placard or other matter in front of or in the vicinity of plaintiff's business, designating the plaintiff's business as being nonunion or unfair to organized labor, or as refusing to permit collective bargaining, or designed to induce or influence persons not to enter plaintiff's place of business;

(d) Soliciting, inducing or influencing or attempting to induce or influence persons, employees or prospective employees of plaintiff not to enter his place of business or do business with him;

(e) Menacing, intimidating, threatening or harassing persons employed by or persons going to and from plaintiff's place of business; from calling plaintiff and members of plaintiff's family and plaintiff's employees vile names and shouting offensive epithets;

(f) Threatening, coercing, intimidating or assaulting the employees of the plaintiff or harassing the employees of the plaintiff, while on their way to and from their homes to the place of business;

(g) Threatening, coercing, intimidating or assaulting prospective employees, or persons seeking employment from the plaintiff, and from preventing by threats, coercion or intimidation, such prospective employees and persons seeking employment, from entering plaintiff's place of business;

(h) Advising, encouraging or assisting or participating in the doing of any of the things herein forbidden.

[fol. 40] It is Further Ordered that the appellants (plaintiffs in the Circuit Court of Cook County) and each of them

and their surety or sureties upon all bonds heretofore filed in the Circuit Court of Cook County, including injunctional and appeal bonds, are hereby released and discharged from all obligations, rights, claims or liabilities, both as principals and sureties, upon all of said bonds; said aforementioned bonds are hereby declared void and all parties, both principals and sureties, appearing as obligors in said bonds are discharged and released from any and all liabilities, claims or damages.

And It is Further Ordered that all costs in this proceeding are hereby taxed against the appellees herein.

Enter:

David F. Matchett, Presiding Justice, Appellate Court of Illinois, First Division.

February 16, 1940.

Certificate of Sheldon W. Govier, Appellate Court Clerk of First District of Illinois, dated February 16, 1940, that foregoing transcript is a true copy of the final decree of Appellate Court.

ASSIGNMENT OF ERRORS

Now come American Federation of Labor et al. by Walter F. Dodd and Daniel D. Carmell, their attorneys, and say that in the decree of the Appellate Court, aforesaid, there is manifest error in that:

(1) Such decree interferes with their freedom of speech and of assembly and deprives plaintiffs in error of life, liberty and property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States;

[fol. 41] (2) Such decree interferes with their freedom of speech and of assembly and denies to plaintiffs in error the privileges and immunities of citizens of the United States in violation of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, Plaintiffs in Error pray that said decree of the Appellate Court be set aside, and that this Court dismiss the complaint in this case.

Respectfully submitted, Walter F. Dodd, Daniel D. Carmell, Bailey Stanton, Attorneys for Plaintiffs in Error.

[fol. 42] Be it Remembered, that to-wit, on the 30th day of March, 1940, there was duly filed in the office of the Clerk of the Supreme Court of Illinois Notice and Motion by Plaintiffs in Error, a copy of such Notice and Motion being in the words and figures as follows, to-wit:

[fol. 43] IN THE SUPREME COURT OF ILLINOIS; APRIL TERM, 1940

No. 25624

AMERICAN FEDERATION OF LABOR, JOHN FITZPATRICK, CHICAGO FEDERATION OF LABOR, ET AL., Plaintiffs of Error,

vs.

ROSS W. SWING, IRENE BOIVIN, NAN CHAPMAN, ET AL., Defendants in Error,

Writ of Error to Appellate Court of Illinois

Honorable David F. Matchett, Judge Presiding

NOTICE

To Mr. Myer N. Rosengard, #1127, 33 North LaSalle St., Mr. Samuel A. Rinella, #1048, One North LaSalle St., Chicago, Illinois, Attorneys for Defendants in Error.

Please Take Notice that on Monday, April 1, A. D. 1940, we shall file in the office of the Clerk of the Supreme Court of Illinois, for presentation to the Supreme Court of Illinois on Tuesday, April 2, A. D. 1940, a motion respecting the record and abstract in the above entitled cause, together with proof of service of this notice. A copy of said motion is herewith served upon you.

Walter F. Dodd, Daniel D. Carmell, Bailey Stanton,
Attorneys for Plaintiffs in Error.

Received copies of the foregoing Notice, together with copies of the motion therein referred to this 28th day of March, A. D. 1940

Myer N. Rosengard, Samuel A. Rinelle.

[fol. 44] IN THE SUPREME COURT OF ILLINOIS, APRIL TERM, A. D. 1940

No. 25624

AMERICAN FEDERATION OF LABOR, JOHN FITZPATRICK, CHICAGO FEDERATION OF LABOR, et al., Plaintiffs in Error,

vs.

ROSS W. SWING, IRENE BOIVIN, NAN CHAPMAN, et al., Defendants in Error

Writ of Error to the Appellate Court of Illinois, First District

Honorable David F. Matchett, Judge Presiding

MOTION BY PLAINTIFFS IN ERROR

Now comes American Federation of Labor, et al., plaintiffs in error, by their attorneys, Walter F. Dodd, Daniel D. Carmell, and Bailey Stanton, and move that the record and abstract in Swing et al. vs. American Federation of Labor, et al., No. 25083, be taken as parts of the record and abstract in the present case, if writ of error is entertained in the present case. In the writ of error here presented, the parties are the same as in No. 25,083, and the issue here presented is identical with that in No. 25083, except that there a temporary injunction was involved, whereas there is here involved an order of the Appellate Court making such injunction permanent. This is therefore a continuation of the same case, and is instituted for the purpose of obtaining a final judgment of this Court with respect to such permanent injunction, which was entered by the Appellate Court in accordance with the mandate issued to that Court by this Court in No. 25083.

Walter F. Dodd, Daniel D. Carmell, Bailey Stanton,
Attorneys for Plaintiffs in Error.

[fol. 45] Be It Remembered, that to-wit, on the 1st day of April, 1940, Notice, Motion, and Suggestions were filed in the office of the Clerk of the Supreme Court by Defend-

ants in Error, a copy of such Notice, Motion, and Suggestions being in the words and figures as follows, to-wit:

[fol. 46] IN THE SUPREME COURT OF ILLINOIS, APRIL TERM, A. D. 1940

No. 25624

AMERICAN FEDERATION OF LABOR, JOHN FITZPATRICK, CHICAGO FEDERATION OF LABOR, et al., Plaintiffs in Error,

vs.

ROSS W. SWING, IRENE BOIVIN, NAN CHAPMAN, et al., Defendants in Error

Writ of Error to Appellate Court of Illinois

Honorable David F. Matchett, Judge Presiding

NOTICE

To Walter F. Dodd, Daniel D. Carmell and Bailey Stanton, Attorneys for Plaintiffs in Error:

You Will Please Take Notice That on Monday, April 1, A. D. 1940, we shall file in the office of the Clerk of the Supreme Court of Illinois, for presentation to the Supreme Court of Illinois, on Tuesday, April 2, A. D. 1940, a motion to dismiss the writ of error in the above cause, together with proof of service of this notice, and suggestions in support of said motion. Copies of said motion and suggestions are herewith served upon you.

Samuel A. Rinella, Myer W. Rosengard, Attorneys for Defendants in Error.

Received a copy of the foregoing Notice, together with copy of motion and suggestions this 28th day of March, 1940.

Walter F. Dodd, Daniel D. Carmell, Bailey Stanton, Attorneys for Plaintiffs in Error.

[fol. 47] IN THE SUPREME COURT OF ILLINOIS, APRIL TERM, A. D. 1940

No. 25624

AMERICAN FEDERATION OF LABOR, JOHN FITZPATRICK, CHICAGO FEDERATION OF LABOR, et al., Plaintiffs in Error,

vs.

ROSS W. SWING, IRENE BOIVIN, NAN CHAPMAN, et al., Defendants in Error

Writ of Error to Appellate Court of Illinois

Honorable David F. Matchett, Judge Presiding

MOTION TO DISMISS WRIT OF ERROR

Now come Ross W. Swing, Irene Boivin, Nan Chapman, et al., Defendants in Error, by Samuel A. Rinella and Myer N. Rosengard, their attorneys, and move the Court to dismiss the writ of error sued out in this cause, as per suggestions filed in support of this motion.

Samuel A. Rinella, Myer N. Rosengard, Attorneys for Defendants in Error.

[fol. 48] IN THE SUPREME COURT OF ILLINOIS, APRIL TERM, A. D. 1940

No. 25624

AMERICAN FEDERATION OF LABOR, JOHN FITZPATRICK, CHICAGO FEDERATION OF LABOR et al., Plaintiffs in Error,

vs.

ROSS W. SWING, IRENE BOIVIN, NAN CHAPMAN et al., Defendants in Error

Writ of Error to Appellate Court of Illinois

Honorable David F. Matchett, Judge Presiding

SUGGESTION IN SUPPORT OF MOTION TO DISMISS WRIT OF ERROR

May it please the Court:

The foregoing writ of error has been sued out of this Court seeking review of a final decree entered in the Appellate Court of Illinois, for the First District and in the First Division thereof.

The subject matter of the proceeding was heretofore before this Court in the case of Ross W. Swing, Irene Boivin, et al., as Appellants, v. American Federation of Labor, et al., as appellees, case No. 25083; and in which case this Court rendered and filed an opinion reported in 372 Ill. 91.

It is conceded by Plaintiffs in Error in their brief filed herein as follows: (Page 1)

"The writ of error is here presented with knowledge that this court has fully settled all issues of the case in a prior review thereof and that the decree entered by the Appellate Court is in compliance with the mandate of this court * * * If this court adheres to the position in People v. Militzer, 301 Ill. 284, page 287, that issues once decided on review will not be again considered on a second review, a final order in this case may properly dismiss the writ of error on the ground that all issues of the case have been settled on prior appeal and that the decree entered by the Appellate Court is in conformity with the mandate issued to the Appellate Court by this Court."

[fol. 49] This cause was brought to this Court by Certificate of Importance issued by the Appellate Court, and the review here involved the question as to whether or no a temporary injunctional order was properly issued and whether or no the bill of complaint stated a cause of action. The trial court entered an order striking the bill of complaint for want of equity on its face and dismissed the bill of complaint; thus dissolving the preliminary injunctional order. The Appellate Court for the First District reversed the cause without remandment, and this Court affirmed the order of the Appellate Court. Consistent with what appeared to be the mandate of this Court, as expressed in the opinion, the Appellate Court entered a final decree. This decree makes permanent the preliminary injunctional order; there are no other or further provisions in the decree (Abs. 3).

We are further advised that the Plaintiffs in Error will move in this Court that the records and proceedings, together with the abstract of record and briefs filed by both parties in Case No. 25083 should stand as the abstracts and briefs in support of and in opposition to this writ of error proceedings now before this Court.

We respectfully suggest that the Plaintiffs in Error seek by this proceeding to have this Court review its former deci-

sion and opinion in the same case. This is conceded by them to be their position in their brief as above quoted from.

We also respectfully submit that under the decisions of this Court in many cases, particularly the cases of People v. Militzer, 301 Ill. 284, and Tribune Co. v. Emery Motor Delivery Co., 338 Ill. 537, the order and opinion of this Court in this case and on previous appeal, finally settles all of the rights of the parties, and that the Plaintiffs in Error are not entitled to a further review.

It is therefore most respectfully suggested that the motion to dismiss the writ of error should be sustained.

Respectfully submitted; Samuel A. Rinella, Myer N. Rosengard, Attorneys for Defendants in Error.

[fol. 50] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

At a term of the Supreme Court, begun and held in Springfield, on Tuesday, the Third day of April in the year of our Lord, One Thousand Nine Hundred and Forty, within and for the State of Illinois.

Present: Francis S. Wilson, Chief Justice; Justice Clyde E. Stone, Justice Paul Farthing, Justice Walter T. Gunn, Justice Norman L. Jones, Justice Elwyn R. Shaw, Justice Loren E. Murphy, John E. Cassidy, Attorney General, Warren C. Murray, Marshal. Attest: Adam F. Bloch, Clerk.

Be it remembered, that to-wit, on the 4th day of April, A. D. 1940, the same being one of the days of the said April term of said Supreme Court, the following proceedings were by said Court had and entered of record in the words and figures as follows, to-wit:

No. 25624

AMERICAN FEDERATION OF LABOR, JOHN FITZPATRICK, CHICAGO FEDERATION OF LABOR, et al., Plaintiffs in Error,

vs.

ROSS W. SWING, IRENE BOIVIN, NAN CHAPMAN, et al., Defendants in Error

ERROR TO APPELLATE COURT OF FIRST DISTRICT

Now on this day the Court having duly considered the motion by defendants in error to dismiss writ of error,

and the Court being now advised in the premises grants the motion and it is ordered that writ of error herein be and it is dismissed.

In view of the ruling on the motion of defendants in error it is not necessary to consider the motion of plaintiffs in error that record and abstract in No. 25083 be taken as parts of the record and abstract in this case.

[fol. 51] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

At a term of the Supreme Court, begun and held in Springfield, on Tuesday, the Third day of April in the year of our Lord One Thousand Nine Hundred and Forty within and for the State of Illinois.

Present: Francis S. Wilson, Chief Justice, Justice Clyde E. Stone, Justice Paul Farthing, Justice Walter T. Gunn, Justice Norman L. Jones, Justice Elwyn R. Shaw, Justice Loren E. Murphy, John E. Cassidy, Attorney General, Warren C. Murray, Marshal, Adam F. Bloch, Clerk.

Be it remembered, that, to-wit: on the 4th day of April, 1940, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

No. 25624

AMERICAN FEDERATION OF LABOR, JOHN FITZPATRICK, CHICAGO FEDERATION OF LABOR, et al., Plaintiffs in Error,

vs.

ROSS W. SWING, IRENE BOIVIN, NAN CHAPMAN, et al., Defendants in Error

ERROR TO APPELLATE COURT, FIRST DISTRICT

40195

And now on this day the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the motion of the Defendants in Error to dismiss this Writ of Error and being fully advised of and con-

cerning the premises, are of the opinion that the said Writ of Error is not well taken.

Therefore, it is considered and ordered by the Court that said Writ of Error be and the same is hence dismissed.

And it is further considered by the Court, that the said Defendants in Error recover of and from the said Plaintiffs in Error costs by them in this behalf expended, and that they have execution therefor.

In Testimony Whereof, I have set my hand and affixed the Seal of the said Supreme Court, in Springfield, in said State, this 5th day of April A. D. 1940.

Adam F. Bloch, Clerk Supreme Court. (Seal.)

[fol. 52] State of Illinois,
Supreme Court, ss:

I, Adam F. Bloch, Clerk of the Supreme Court of the State of Illinois, and keeper of the records and seal thereof, do hereby certify the above and foregoing to be a true copy of Transcript of Record for filing on Petition for Certiorari in the United States Supreme Court in a certain cause entitled in this Court American Federation of Labor, John Fitzpatrick, Chicago Federation of Labor, et al., Plaintiffs in Error, vs. Ross W. Swing, Irene B avin, Nan Chapman, et al., No. 25624, Error Appellate Court of First District, filed in this office on the 8th day of March, A. D. 1940.

Witnes my hand and Seal of said Supreme Court, at Springfield, in said State, this 5th day of April, A. D. 1940.

Adam F. Bloch, Clerk. (Seal.)

[fol. 53] Supreme Court of the United States

Order Allowing Certiorari—Filed May 20, 1940

The petition herein for a writ of certiorari to the Supreme Court of the State of Illinois is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Blank Page